

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CA NO.

MAGISTRATE JUDGE *Bouler*

JANE DOE,
Plaintiff,

v.

05 - 11080 GAO

SHERIFF OF ESSEX COUNTY d/b/a
ESSEX COUNTY CORRECTIONAL ALTERNATIVE
CENTER, FRANK G. COUSINS, JR., Individually and
in his Official Capacity as Sheriff of Essex County,
ANDOVER HOUSING AUTHORITY, and
CHRISTINE METZEMAKERS, Individually, and in her
Official Capacity as Executive Director of the Andover
Housing Authority,
Defendants,

RECEIPT #
AMOUNT \$ *250*
SUMMONS ISSUED *N/A*
LOCAL RULE 4.1
WAIVER FORM
MCF ISSUED
BY DPTY. CLK. *KWA*
DATE *6/24/05*

NOTICE OF REMOVAL

To: United States District Court
District of Massachusetts

The petition of the defendants, assert:

1. On or about April 25, 2005, plaintiff commenced a civil action against the defendants in the Superior Court of the Commonwealth of Massachusetts, County of Essex, entitled Jane Doe v. Sheriff of Essex County, et al, Essex Superior Court CA No. 05-0643. A copy of the Complaint, and the Summons served on the defendant Sheriff of Essex County is attached hereto.
2. The above-described action is a civil action of which this Court has original jurisdiction under the provisions of 42 U.S.C. Section 1983, and is one which may be removed to this Court by the defendants pursuant to the provisions of 28 U.S.C. Section 1441. This is an action alleging claims including those arising out of the Constitution of the United States. The defendants file this Notice of Removal within thirty (30) days of receipt of plaintiff's Complaint and service of Summons upon them pursuant to 28 U.S.C. Section 1446(b).


3. Written notice of the filing of this Notice shall be promptly served upon the plaintiff and filed with the Clerk of the Essex County Superior Court pursuant to 28 U.S.C. Section 1446(d).

4. Pursuant to Local Rule 81.1 of the United States District Court for the District of Massachusetts, the defendants shall file certified or attested copies of all records and proceedings in the state court and certified or attested copies of all docket entries in the state court with this Court.

WHEREFORE, petitioners respectfully pray that the action now pending against them in the Superior Court of the Commonwealth of Massachusetts in and for the County of Essex, be removed to the United States District Court for the District of Massachusetts.

Signed and sworn to under the penalties of perjury this 23rd day of May, 2005.

Defendants,
By their Attorney,


Douglas I. Louison BBO# 545191
Stephen C. Pfaff BBO#553057
MERRICK, LOUISON & COSTELLO
67 Batterymarch Street
Boston, MA 02110
(617) 439-0305

CERTIFICATE OF SERVICE

I, Stephen C. Pfaff, hereby certify that on the 23rd day of May, 2005, I served the foregoing by causing a copy to be mailed, postage prepaid, directed to Jeffrey Beeler, Esquire HEINLEIN & BEELER, P.C., 207 Union Street, South Natick, MA 01760 and Martin Rooney, Esquire, Curley & Curley, P.C., 27 School Street, Boston, MA 02108.


Stephen C. Pfaff

CIVIL COVER SHEET

the JS 44 civil cover sheet and the information contained hereon neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating a civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

(a) PLAINTIFFS

Jane Doe

(b) County of Residence of First Listed Plaintiff Essex
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Jeffrey Beeler, HEINLEIN & BEELER, PC, 207 Union Street,
South Natick, MA 01760

DEFENDANTS

Sheriff of Essex County d/b/a Essex County Correctional
Alternative Center, Frank G. Cousins, Andover Housing Authority,
County of Residence of First Listed Defendant Essex

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If known)

Stephen C. Praff, Esquire, MERRICK, LOUISON & COSTELLO,
LLP, 67 Battery March Street, Boston, MA 02110

I. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☒ 1 U.S. Government Plaintiff
☐ 3 Federal Question (U.S. Government Not a Party)
☐ 2 U.S. Government Defendant
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | |
|---|--|---|--|
| Citizen of This State | PTF DEF
<input type="checkbox"/> 1 <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | PTF DEF
<input type="checkbox"/> 4 <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 <input type="checkbox"/> 6 |

V. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input checked="" type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Medical Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS--- Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

I. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 USC Section 1983

Brief description of cause:

II. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No**III. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

ATE SIGNATURE OF ATTORNEY OF RECORD

OR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) Jane Doe v. Sheriff of Essex County, et al
-
2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).
- ☐ I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.
- ☒ II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950. *Also complete AO 120 or AO 121 for patent, trademark or copyright cases
- ☐ III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- ☐ IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- ☐ V. 150, 152, 153.
3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.
- N/A
-
4. Has a prior action between the same parties and based on the same claim ever been filed in this court?
- YES ☐ NO ☒
5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)
- YES ☐ NO ☒
- If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?
- YES ☐ NO ☒
6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?
- YES ☐ NO ☐
7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).
- YES ☒ NO ☐
- A. If yes, in which division do all of the non-governmental parties reside?
- Eastern Division ☒ Central Division ☐ Western Division ☐
- B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?
- Eastern Division ☐ Central Division ☐ Western Division ☐
8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)
- YES ☐ NO ☐

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Stephen C. Pfaff, Esquire, MERRICK, LOUISON & COSTELLO, LLPADDRESS 67 Batterymarch Street, Boston, MA 02110TELEPHONE NO. 617-439-0305

(TO PLAINTIFF'S ATTORNEY: Please Circle Type of Action Involved: - TORT - MOTOR VEHICLE TORT -
CONTRACT - EQUITABLE RELIEF - OTHER.)

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss.

SUPERIOR COURT
CIVIL ACTION

No.
050643

Jane Doe

, Plaintiff(s)

v.

Sheriff of Essex County, et al.,

, Defendant(s)

SUMMONS

To the above named Defendant: Sheriff of Essex County d/b/a Essex County Correctional Alternat
Center.

You are hereby summoned and required to serve upon Jeffrey S. Beeler, Heinlein & Beeler,
plaintiff's attorney, whose address is 207 Union Street, Natick, MA, an answer to the

complaint which is herewith served upon you, within 20 days after service of this summons upon you. exclusive of the
day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the
complaint. You are also required to file your answer to the complaint in the office of the Clerk of this court at

34 Federal Street, Salem either before service upon plaintiff's attorney or within a reasonable time thereafter.

Unless otherwise provided by Rule 13 (a), your answer must state as a counterclaim any claim which you may
have against the plaintiff which arises out of the transaction or occurrence that is the subject matter of the plaintiff's
claim or you will thereafter be barred from making such claim in any other action.

Barbara J. Rouse

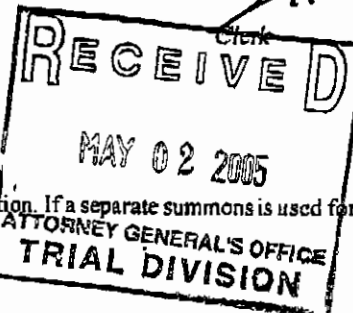
WITNESS, [REDACTED], Esquire, at Salem, the 25th
day of April, in the year of our Lord two thousand five

A TRUE COPY ATTEST

John Roberto

Special Process Server & Disinterested Person
APRIL 29, 2005

Thomas H. Quicoll Jr.



NOTES:

1. This summons is issued pursuant to Rule 4 of the Massachusetts Rules of Civil Procedure.
2. When more than one defendant is involved, the names of all defendants should appear in the caption. If a separate summons is used for each defendant, each should be addressed to the particular defendant.

NOTICE TO DEFENDANT - You need not appear personally in court to answer the complaint, but if you claim to have a defense, either you or your attorney must serve a copy of your written answer within 20 days as specified herein and also file the original in the Clerk's Office.

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO.:

JANE DOE,

Plaintiff,

v.

SHERIFF OF ESSEX COUNTY d/b/a
 ESSEX COUNTY CORRECTIONAL ALTERNATIVE
 CENTER, FRANK G. COUSINS, JR., Individually,
 and in his Official Capacity as Sheriff of Essex County,
 ANDOVER HOUSING AUTHORITY, and
 CHRISTINE METZEMAKERS, Individually, and in her
 Official Capacity as Executive Director of the Andover
 Housing Authority,

Defendants.

PLAINTIFF'S COMPLAINT AND JURY TRIAL DEMAND**Introduction**

This is a civil rights and tort case against the Defendants arising out of the beating and rape of the Plaintiff, on April 26, 2003, at a property that was owned and controlled by the Andover Housing Authority [AHA]. On that date, Alexander Mattei, an inmate at the Essex County House of Correction, was on the premises of the AHA as part of a community service/work release program run by the Essex County Sheriff under a program referred to as the Essex County Correctional Alternative Center [CAC]. Despite requirements that participating inmates be non-violent and properly supervised at all times, Mattei, who was violent and unsupervised on April 26, 2002, beat and raped the Plaintiff who is mentally handicapped and blind in her AHA apartment.

PARTIES

1. The Plaintiff, Jane Doe, was at all times relevant an individual who resided in Andover, County of Essex, Commonwealth of Massachusetts, who proceeds in this action under a pseudonym due to the nature of the events at issue. The Plaintiff is more fully identified in the Affidavit of Identity that is the subject of the Plaintiff's Ex Parte Emergency Motion to Impound.
2. The Defendant, Sheriff of Essex County [Sheriff] d/b/a Essex County Correctional Alternative Center [CAC], at all times relevant had a usual place of business in Middleton, County of Essex, Commonwealth of Massachusetts.
3. The Defendant, Frank G. Cousins, Jr. [Cousins], individually, and in his official capacity as Sheriff of Essex County, was at all times relevant the Sheriff of Essex County who maintained a usual place of business in Middleton, County of Essex, Commonwealth of Massachusetts.
4. The Defendant, Andover Housing Authority [AHA], was at all times relevant a body politic and corporate, pursuant to M.G.L. c. 121B, § 1, et. seq., and corresponding sections of earlier laws, with a principal place of business in Andover, County of Essex, Commonwealth of Massachusetts.
5. The Defendant, Christine Metzmakers, individually, and in her official capacity as executive director of the Andover Housing Authority was at all times relevant the executive director of the Andover Housing Authority who maintained a usual place of business in Andover, County of Essex, Commonwealth of Massachusetts.

FACTS COMMON TO ALL COUNTS

6. The Plaintiff repeats and realleges paragraphs 1 through 5 as though more fully set forth herein.
7. On or about February 28, 1997, the AHA entered into an agreement with the Sheriff whereby the Sheriff would provide to the AHA community service workers from the CAC.
8. From the inception of the CAC's work in Andover, and by January 20, 1998, at the latest, the Sheriff had affirmatively represented that CAC workers, all of whom were convicted criminals, were "carefully screened before being sent out to work."
9. Indeed, applicable, law, regulation and policy required that such screening occur.
10. Moreover, the agreement between the AHA and the Sheriff, provided that CAC workers, would be supervised at all times.
11. On April 26, 2002, the Plaintiff was a tenant at the AHA's Grandview Terrace housing facility that was at all times relevant owned, operated or otherwise controlled by the AHA and Christine Metzmakers.
12. Grandview Terrace was at all times relevant an affordable housing facility for seniors and disabled persons.
13. The Plaintiff was at all times relevant a disabled person in that she is developmentally disabled and visually impaired.
14. On April 26, 2002, the AHA was using the services of workers from the CAC, including Alexander Mattei, for maintenance work.

15. At all times relevant, the CAC was owned, operated and/or otherwise controlled by the Sheriff and Cousins.
16. At all times relevant, Alexander Mattei had an extensive criminal record including, on information and belief, breaking and entering and assault and battery, and should not have been recommended for, or allowed to participate in, a community service/work release program that would necessarily put him in unfettered contact with particularly vulnerable individuals such as the Plaintiff.
17. Despite the obligations of the AHA, Metzmakers, Sheriff and Cousins to properly screen and supervise Mattei and explicit and implicit assurances of safety concerning the use of inmate labor in a Housing Authority facility for particularly vulnerable people, such as the Plaintiff, Mattei was placed in the program and unsupervised by either the AHA, Metzmakers, Sheriff or Cousins.
18. While participating in the community service/work release program and while unsupervised, Mattei, who had reportedly been previously convicted of breaking and entering and assault and battery, gained entry into the Plaintiff's apartment and proceeded to viciously beat and rape her.
19. On information and belief, the entry was facilitated, in part, due to the AHA's negligent failure to provide and maintain adequate locks on the Plaintiff's door, despite its statutory and regulatory obligation to do so.
20. The rape and injuries were originally caused by the negligence and/or gross negligence of the AHA, Metzmakers, Sheriff and Cousins.

21. Mattei was subsequently convicted of related criminal charges and sentenced to 30 to 35 years in state prison.
22. Pursuant to M.G.L. c. 258, § 4, the Plaintiff timely presented her claims to the AHA and Sheriff. See Ex. A.¹
23. The AHA and Sheriff have finally denied the Plaintiff's claims.

COUNT I
JANE DOE v. ANDOVER HOUSING AUTHORITY
(NEGLIGENCE)

24. The Plaintiff repeats and realleges paragraphs 1 through 23 as though more fully set forth herein.
25. The Defendant, AHA, owed the Plaintiff a duty of reasonable care in connection with its ownership, management, operation and maintenance of the property rented to the Plaintiff.
26. The AHA breached its duty to the Plaintiff in that it, among other things, negligently and carelessly:
 - a. provided inadequate locking mechanisms on the apartment rented to the Plaintiff;
 - b. brought dangerous, unsupervised criminals onto a property that housed particularly vulnerable elderly and handicapped people, such as the Plaintiff, who would be easy prey for such criminals;

¹ The appended presentment letters have been redacted to protect the Plaintiff's privacy.

- c. inadequately screened and allowed dangerous, unsupervised criminals, such as Alexander Mattei, onto a property that housed particularly vulnerable elderly and handicapped people, such as the Plaintiff, who would be easy prey for such criminals; and,
- d. failing to otherwise maintain the premises in a reasonably safe and well-kept condition.

27. As a direct and proximate result of the AHA's negligence, the Plaintiff suffered severe, painful and permanent personal injuries and has incurred substantial medical costs and will incur substantial costs in the future.

WHEREFORE, the Plaintiff demands judgment as against the Defendant, AHA, jointly and severally, with all other defendants herein, in an amount that the finder of fact deems meet and just, plus costs and interest thereon.

COUNT II
JANE DOE v. ANDOVER HOUSING AUTHORITY
(GROSS NEGLIGENCE)

28. The Plaintiff repeats and realleges paragraphs 1 through 27 as though more fully set forth herein.
29. The AHA was grossly negligent in that it, among other things,:
- a. provided inadequate locking mechanisms on the apartment rented to the Plaintiff when it knew it was bringing criminals to the property;
 - b. brought dangerous, unsupervised criminals onto a property that housed particularly vulnerable elderly and handicapped people, such as the Plaintiff, who would be easy prey for such criminals;

- c. inadequately screened and allowed dangerous, unsupervised criminals, such as Alexander Mattei, onto a property that housed particularly vulnerable elderly and handicapped people, such as the Plaintiff, who would be easy prey for such criminals; and,
- d. failed to otherwise maintain the premises in a reasonably safe and well-kept condition.

30. As a direct and proximate result of the Defendant, AHA's, gross negligence the Plaintiff suffered severe, painful and permanent personal injuries and has incurred substantial medical costs and will incur substantial costs in the future.

WHEREFORE, the Plaintiff demands judgment as against the Defendant, AHA, jointly and severally, with all other defendants herein, in an amount that the finder of fact deems meet and just, plus costs and interest thereon.

COUNT III
JANE DOE v. ANDOVER HOUSING AUTHORITY
(BREACH OF WARRANTY OF HABITABILITY)

- 31. The Plaintiff repeats and realleges paragraphs 1 through 30 as though more fully set forth herein.
- 32. The Defendant, AHA, warranted by law and by contract to the Plaintiff that the Plaintiff's apartment was habitable and in accordance with the state sanitary code.
- 33. The Defendant, AHA, breached the warranty of habitability by, among other things,
 - a. failing to properly inspect the premises; and,

- b. failing to provide, install and maintain locks on the door such that the door was capable of being secured.

34. As a direct and proximate result of the AHA's breach of warranty of habitability, the Plaintiff suffered severe, painful and permanent personal injuries and has incurred substantial medical costs and will incur substantial costs in the future.

WHEREFORE, the Plaintiff demands judgment as against the Defendant, AHA, jointly and severally, with all other defendants herein, in an amount that the finder of fact deems meet and just, plus costs and interest thereon.

COUNT IV
JANE DOE v. ANDOVER HOUSING AUTHORITY
(BREACH OF THE COVENANT OF QUIET ENJOYMENT)

35. The Plaintiff repeats and realleges paragraphs 1 through 34 as though more fully set forth herein.

36. As a result of the above, the Defendant breached the covenant of quiet enjoyment in violation of M.G.L. c. 186, § 14.

WHEREFORE, the Plaintiff demands judgment against the Defendant, jointly and severally with all other Defendants herein, as provided for by M.G.L. c. 186, § 14, plus costs, interest and attorney's fees.

COUNT V
JANE DOE v. SHERIFF
(NEGLIGENCE)

37. The Plaintiff repeats and realleges paragraphs 1 through 36 as though more fully set forth herein.
38. The Defendant, Sheriff, owed the Plaintiff a duty of reasonable care in connection with its operation of and control over the activities of the CAC and its provision of inmate labor to the AHA.
39. The Sheriff breached its duty to the Plaintiff in that it, among other things, negligently and carelessly:
- a. brought dangerous, unsupervised criminals onto a property that housed particularly vulnerable elderly and handicapped people, such as the Plaintiff, who would be easy prey for such criminals;
 - b. provided dangerous, unsupervised criminals for work at a property that housed particularly vulnerable elderly and handicapped people, such as the Plaintiff, who would be easy prey for such criminals;
 - c. inadequately screened and allowed dangerous criminals, such as Alexander Mattei, to participate in a program that led to Mattei's being at a property that housed particularly vulnerable elderly and handicapped people, such as the Plaintiff, who would be easy prey for such criminals; and,
 - d. failed to otherwise carry on the activities of the CAC in a reasonably safe manner in light of the foreseeable risk of harm such activities presented.

Plaintiff, who would be easy prey for such criminals;

- c. inadequately screened and allowed dangerous criminals, such as Alexander Mattei, to participate in a program that led to Mattei's being at a property that housed particularly vulnerable elderly and handicapped people, such as the Plaintiff, who would be easy prey for such criminals; and,
- d. failed to otherwise carry on the activities of the CAC in a reasonably safe manner in light of the foreseeable risk of harm such activities presented.

47. As a direct and proximate result of Cousins' negligence, the Plaintiff suffered severe, painful and permanent personal injuries and has incurred substantial medical costs and will incur substantial costs in the future.

WHEREFORE, the Plaintiff demands judgment as against the Defendant, Cousins, jointly and severally, with all other defendants herein, in an amount that the finder of fact deems meet and just, plus costs and interest thereon.

COUNT VIII
JANE DOE v. SHERIFF
(GROSS NEGLIGENCE)

48. The Plaintiff repeats and realleges paragraphs 1 through 47 as though more fully set forth herein.

49. Cousins was grossly negligent in that it, among other things, he:

- a. brought dangerous, unsupervised criminals onto a property that housed particularly vulnerable elderly and handicapped people, such as the Plaintiff, who would be easy prey for such criminals;

- b. provided dangerous, unsupervised criminals onto a property that housed particularly vulnerable elderly and handicapped people, such as the Plaintiff, who would be easy prey for such criminal;
 - c. inadequately screened and allowed dangerous criminals, such as Alexander Mattei, onto a property that housed particularly vulnerable elderly and handicapped people, such as the Plaintiff, who would be easy prey for such criminals; and,
 - d. failed to otherwise maintain the premises in a reasonably safe and well-kept condition.
50. As a direct and proximate result of Cousins' gross negligence, the Plaintiff suffered severe, painful and permanent personal injuries and has incurred substantial medical costs and will incur substantial costs in the future.

WHEREFORE, the Plaintiff demands judgment as against the Defendant, jointly and severally with all other defendants herein, in an amount that the finder of fact deems meet and just, plus costs and interest thereon.

Count IX
JANE DOE v. ANDOVER HOUSING AUTHORITY and CHRISTINE
METZEMAKERS, INDIVIDUALLY, and in her OFFICIAL
CAPACITY as EXECUTIVE DIRECTOR OF THE
ANDOVER HOUSING AUTHORITY
(Civil Rights Violations, 42 U.S.C § 1983, et seq.)

51. The Plaintiff repeats and realleges paragraphs 1 through 50 as though more fully set forth herein.

52. At all times material, the Defendants were acting under color of the law, statutes, ordinances and regulations of the Commonwealth of Massachusetts, the Essex County Sheriff's Department and the Andover Housing Authority.
53. As all times material, the AHA's Grandview Terrace was intended to house in a safe manner those who were particularly vulnerable, such as the elderly and those with physical and mental handicaps, such as the Plaintiff.
54. Due to the nature of the facility, and the AHA's obligations under law and regulation, the Defendants had a special relationship with the Plaintiff akin to that owed one in custody whereby they had an affirmative obligation to ensure that they, in conjunction with the activities of the Sheriff, did not create a danger such as that created by the use of inmate labor at the premises.
55. At all times material, the Defendants knew that they had an affirmative obligation, as set forth by law, regulation and policy to properly supervise all participants in the CAC program such as Mattei, who at all times relevant remained in the custody of the Sheriff and subject to supervision by the Sheriff and the Defendants.
56. At all times relevant, the Defendants in conjunction with the Sheriff, affirmatively represented to the AHA and its residents, such as the Plaintiff with whom the Defendants had a special relationship, that CAC participants were carefully screened and were non-violent offenders who would not pose an unreasonable risk of harm to those with whom they would be put in contact by the Defendants, such as the Plaintiff.

57. Despite the Defendants': (a) knowledge of their obligations; (b) knowledge of the obvious risk of serious harm if they failed to properly discharge their obligations; and, (c) affirmative representations of compliance therewith, the Defendants, by conduct that shocks the conscience and with deliberate indifference, created an extremely dangerous risk of harm to the Plaintiff, by placing Mattei in a position where he had unfettered access to her.
58. By the actions described above, the Defendants deprived the Plaintiff of her clearly established constitutional rights including her constitutionally recognized liberty interest under the Fourteenth Amendment and the Constitution and laws of the United States and the Constitution and laws of the Commonwealth of Massachusetts, to safety in her personal and bodily integrity and freedom from sexual molestation and rape by an inmate who at all times relevant remained in the custody of the Sheriff and was subject to supervision by all of the Defendants.
59. As a direct and proximate result of the acts and omissions of Defendants, plaintiff was forced to endure great anguish and anxiety, was forced to suffer severe and painful physical and psychological injuries and was subjected to humiliation and degradation.

WHEREFORE, the Plaintiff demands judgment against the Defendants, jointly and severally with all other Defendants herein, in an amount that the finder of fact deems fair and just, plus punitive damages, costs, interest, attorney's fees and such other relief as the Court deems just and proper.

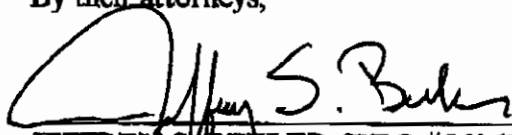
participants were carefully screened and were non-violent offenders who would not pose an unreasonable risk of harm to those with whom they would be put in contact by the Sheriff, such as the Plaintiff.

65. Despite the Defendants': (a) knowledge of their obligations; (b) knowledge of the obvious risk of serious harm if they failed to properly discharge their obligations; and, (c) affirmative representations of compliance therewith, the Defendants, by conduct that shocks the conscience and with deliberate indifference created an extremely dangerous risk of harm to the Plaintiff, by placing Mattei in a position where he had unfettered access to her.
66. By the actions described above, the Defendants deprived the Plaintiff of her clearly established constitutional rights including her constitutionally recognized liberty interest under the Fourteenth Amendment, the Constitution and laws of the United States and the Constitution and laws of the Commonwealth of Massachusetts, to safety in her personal and bodily integrity and freedom from sexual molestation and rape by an inmate who at all times relevant remained in the custody of the Defendants.
67. As a direct and proximate result of the acts and omissions of Defendants, plaintiff was forced to endure great anguish and anxiety, was forced to suffer severe and painful physical and psychological injuries and was subjected to humiliation and degradation.

WHEREFORE, the Plaintiff demands judgment against the Defendants, jointly and severally with all other Defendants herein, in an amount that the finder of fact deems fair and just, plus punitive damages, costs, interest, attorney's fees and such other relief as the Court deems just and proper.

THE PLAINTIFFS DEMAND A TRIAL BY JURY ON ALL COUNTS SO TRIABLE.

Respectfully submitted,
The Plaintiffs,
By their attorneys,

A handwritten signature in black ink, appearing to read "Jeffrey S. Beeler", is written over a horizontal line.

JEFFREY S. BEELER (BBO #563679)
HEINLEIN & BEELER, P.C.
207 Union Street
S. Natick, MA 01760
(508) 655-8700 (Tel)
(508) 655-2700 (Fax)

EXHIBIT A

HEINLEIN & BEELER, P.C.

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Jeffrey S. Beeler*

Telephone: (508) 655-8700

Facsimile: (508) 655-2700

Scott R. Pearl

*Also Admitted in Connecticut and Maine

April 6, 2004

Via Certified Mail 7000 0600 0029 1057 9822,

Return Receipt Requested

Randall L. Hanson

Andover Town Clerk

Town Offices

36 Bartlett Street

Andover, MA 01810

Via Certified Mail 7000 0600 0029 1057 9846,

Return Receipt Requested

Frank G. Cousins, Jr., Sheriff

Essex County Sheriff's Department

20 Manning Street

P.O. Box 807

Middleton, MA 01949

Via Certified Mail 7000 0600 0029 1057 9860,

Return Receipt Requested

Essex County Correctional Alternative Center

c/o Thomas F. Riley, Attorney General

Comm. of Massachusetts

One Ashburton Place, 20th Floor

Boston, MA 02108

Via Certified Mail 7000 0600 0029 1057 9884,

Return Receipt Requested

Christine Metzemaekers

Executive Director

Andover Housing Authority

100 Morton Street

Andover, MA 01810

Via Certified Mail 7000 0600 0029 1057 9907,

Return Receipt Requested

Essex County Commissioners

c/o Thomas F. Riley, Attorney General

Comm. of Massachusetts

One Ashburton Place, 20th Floor

Boston, MA 02108

Via Certified Mail 7000 0600 0029 1057 9839,

Return Receipt Requested

Brian Major, Chairman

Andover Board of Selectmen

Town Offices

36 Bartlett Street

Andover, MA 01810

Via Certified Mail 7000 0600 0029 1057 9853,

Return Receipt Requested

Essex County Sheriff's Department

c/o Thomas F. Riley, Attorney General

Comm. of Massachusetts

One Ashburton Place, 20th Floor

Boston, MA 02108

Via Certified Mail 7000 0600 0029 1057 9877,

Return Receipt Requested

Joseph A. Furnari, Superintendent

Essex County Correctional Alternative Center

165 Marston Street

Lawrence, MA 01841

Via Certified Mail 7000 0600 0029 1057 9891,

Return Receipt Requested

Ronald C. Hajj, Chairman

Andover Housing Authority

100 Morton Street

Andover, MA 01810

Via Certified Mail 7000 0600 0029 1057 9914,

Return Receipt Requested

Edward A. Flynn, Secretary

Executive Office of Public Safety

1 Ashburton Place

Room 2133

Boston, MA 02108

Re: My Client:

D.O.L:

April 26, 2002

Letter of Presentment Pursuant to M.G.L. c. 258 of Claims Against the Town of Andover, Essex County, Essex County Sheriff's Department, Essex County Correctional Alternative Center and Andover Housing Authority

Letter of Presentment
Page 2 of 3
April 6, 2004

Gentlemen and Ms. Metzemaekers:

Please be advised that I represent [REDACTED] in connection with serious personal injuries that she sustained on April 26, 2002.

As you may be aware, on April 26, 2002, my client, [REDACTED] was a tenant at the Grandview Terrace housing facility that was owned, operated or otherwise controlled by the Town of Andover and/or the Andover Housing Authority. Grandview Terrace is an affordable housing facility for seniors and disabled persons. [REDACTED] is such a disabled person in that she is developmentally disabled and visually impaired. On that date, the Housing Authority was using the services of workers from the Essex County Correctional Alternative Center [CAC] in Lawrence for maintenance work. As you may know, at all times since the Housing Authority began using CAC services in approximately February of 1997, the CAC was owned, operated and/or otherwise controlled by Essex County and/or the Essex County Sheriff's Department [Sheriff].

On April 26, 2002, one of the inmates of the CAC who was brought to the Grandview Terrace facility by the Housing Authority and Sheriff was Alexander Mattei. At the time, Mattei had an extensive criminal record. At all times, pursuant to the contract between the Sheriff/CAC and the Town of Andover/Housing Authority, inmates, such as Mattei, were to be supervised at all times. Nevertheless, despite this obligation to supervise and explicit and implicit assurances of safety concerning the use of inmate labor in a Housing Authority facility for particularly vulnerable people, such as [REDACTED], Mattei was unsupervised. While unsupervised, Mattei, who had reportedly been previously convicted of breaking and entering and assault and battery, gained entry into [REDACTED] apartment and proceeded to viciously beat and rape her. The entry may have been facilitated due to the Housing Authority's negligent failure to provide and maintain adequate locks on [REDACTED] door, despite its statutory and regulatory obligation to do so. As I trust you are aware, Mattei was recently convicted of related criminal charges and sentenced to 30 to 35 years in state prison.

The actions of the Sheriff, Essex County, Town of Andover and Housing Authority in bringing a known, dangerous and unsupervised criminal such as Mattei to a housing complex such as Grandview Terrace were negligent and constitute the original cause of the harm that befell [REDACTED]. See Kent v. Commonwealth, 437 Mass. 312 (2002). Moreover, such actions by the Sheriff, Essex County, Town of Andover and Housing Authority will be properly viewed as grossly negligent and liability will properly attach to each pursuant to the provisions of M.G.L. c. 258. Further, it is plain that certain types of convicts were ineligible to participate in the CAC's work release program. Accordingly, Mattei's involvement in the program should never have been recommended, approved and or continued by the Sheriff, Essex County, Town of Andover and Housing Authority. This is particularly the case given the Housing Authority's stated position that the Sheriff misled it as to the criminal backgrounds of those in the CAC program. Consistent with the holding of Bonnie W. v. Commonwealth, 419 Mass. 122 (1994) and other relevant cases, the Sheriff, Essex County, Town of Andover and Housing Authority face substantial exposure to c. 258 and other claims that will not afford an arbitrary damages cap such as that set forth in c. 258.

Letter of Presentment

Page 3 of 3

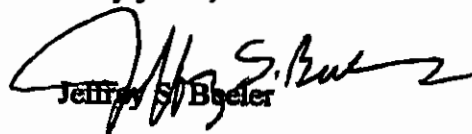
April 6, 2004

Demand, therefore, is hereby made on the Town of Andover, Essex County, Sheriff and Housing Authority for the statutory maximum of \$100,000.00 each.

I respectfully suggest that unlike the usual c. 258 case, the Town of Andover, Essex County, Sheriff and Housing Authority should avail themselves of the opportunity afforded them under c. 258 to resolve this case prior to suit. As reflected in the pervasive publicity surrounding this incident, serious errors were made that reflect poorly on all involved. Moreover, you should further be advised that if litigation becomes necessary, we have no intention of being satisfied with the remedies afforded by c. 258. We will advance all available claims and, given the underlying horrific facts, we intend to petition for a special act of the legislature to remove this claim from the strictures of c. 258.

Thank you for your kind attention to this matter.

Truly yours,


Jeffrey S. Boeler

JSB:nb

HEINLEIN & BEELER, P.C.

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Scott R. Pearl
*Also Admitted in Connecticut and Maine

April 6, 2004

Via Certified Mail

Return Receipt Requested

Christine Metzemaekers
Executive Director
Andover Housing Authority
100 Morton Street
Andover, MA 01810

Re: My Client:
D.O.L:

██████████
April 26, 2002

**Supplemental Letter of Presentment Pursuant to M.G.L. c. 258 of Claims
Against the Andover Housing Authority**

Dear Ms. Metzemaekers:

Please consider this letter as a supplementation of our c. 258 letter of presentment of today's date. For your convenience, a copy of our initial letter of presentment is enclosed and it is hereby incorporated by reference.

The purpose of this supplemental letter is to advise that in addition to the various theories advanced in the initial letter of presentment, we will be advancing claims based on theories of breach of warranty of habitability and breach of the covenant of quiet enjoyment. As you know from the enclosed letter, defects with ██████████ lock and/or its maintenance may have facilitated Mr. Mattel's entry into her apartment. Such defects or maintenance failures would constitute a breach of the warranty of habitability. Further, the events as set forth in the initial letter would support a claim for breach of the covenant of quiet enjoyment. If we are unable to resolve this matter within the next six (6) months as contemplated by c. 258, we will advance such claims as appropriate.

Thank you for your kind attention to this matter.

Truly yours,


Jeffrey S. Beeler

JSB:nb
Enc.